

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.



SUPERIOR COURT
CIVIL ACTION
DOCKET NUMBER

ALBERTO L. FERNANDEZ MOJICA and
TIFFANY A. GENDRON,
PLAINTIFFS

V.
ANGELA S. CHIN and ROSEMARY VICTORIA
a/k/a ROSEMARY V. BORNEO,
DEFENDANTS

COMPLAINT

1. Alberto L. Fernandez Mojica, who is also known as Alberto L. Fernandez, is an adult who resides at 9 Morning Mist Lane, Bourne, Barnstable County, Massachusetts and who is one of the plaintiffs in this civil action.
2. Tiffany A. Gendron is an adult who resides at 9 Morning Mist Lane, Bourne, Barnstable County, Massachusetts and who is one of the plaintiffs in this civil action.

3. Rosemary Victoria, who is also known as Rosemary V. Borneo, is an adult who resides at 31 Fuller Avenue, Attleboro, Bristol County, Massachusetts and who is one of the defendants in this civil action.
4. Angela S. Chin is an adult who resides at 155 Walnut Street, Bridgewater, Plymouth County, Massachusetts and who is one of the defendants in this civil action.
5. At all relevant times, Rosemary Victoria and Angela S. Chin were licensed as real estate brokers in the Commonwealth of Massachusetts although Ms. Victoria's real estate brokers license was subsequently suspended and then surrendered.
6. Angela S. Chin engages in the business of buying, rehabilitating, and selling real estate within the Commonwealth.
7. By a deed dated December 18, 2014 and recorded in the Barnstable County Registry of Deeds Book 28607, Pages 92 through 94 on December 31, 2014, Susan E. Thibedeau, as the Personal Representative appointed in the Estate of Alexander J. Skene, Norfolk Probate and Family Court, Docket Number 14P1796, conveyed to Angela S. Chin the real property shown as Lot 5 on the plan of land recorded in the Barnstable County Registry of Deeds Plan Book 431, Page 28.
8. The consideration for the deed was \$150,000.00, and the street address for Lot 5 is 9 Morning Mist Lane, Bourne, Barnstable County Massachusetts.
9. At that time, the Town of Plymouth was considering the construction of four wind turbines on the adjacent property.

10. Through Rosemary Victoria, Angela S. Chin listed her property for sale.
11. Both Rosemary Victoria and Angela S. Chin were aware that the Town of Plymouth was in the process of permitting the construction of four wind turbines on the adjacent property.
12. Neither Rosemary Victoria nor Angela S. Chin divulged this information about the wind turbines.
13. To advertise and encourage the sale of the property, Angela S. Chin held several open houses.
14. During one open house, a neighbor inquired about the sale but was told nothing about the impending construction of the wind turbines.
15. During another open house, another neighbor specifically asked Rosemary Victoria about the wind turbines and Rosemary Victoria told her that she had no intention of mentioning the wind turbines to a prospective buyer.
16. Throughout these marketing events, Rosemary Victoria was acting as the real estate agent for Angela S. Chin.
17. On or about August 17, 2015, Alberto L. Fernandez Mojica and Tiffany A. Gendron entered a purchase and sale agreement with Angela S. Chin, as the buyer, and with Rosemary Victoria, as the real estate broker.

18. Neither Angela S. Chin nor Rosemary Victoria ever told the plaintiffs about the imminent construction of the four, massive, wind turbines on the adjacent property.

19. By a deed dated September 28, 2015, Angela S. Chin, for the consideration of \$395,000.00, conveyed the 9 Morning Mist Lane property to the plaintiffs.

20. Four wind turbines were subsequently constructed and operated on the property adjacent to the plaintiffs' 9 Morning Mist Lane property.

21. The wind turbines materially interfere with the plaintiffs' sleep and with the quiet enjoyment of their home.

22. Massachusetts General Laws Chapter 93A, Section 2 prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce within the Commonwealth.

23. Massachusetts General Laws Chapter 93A, Section 2 empowers the Attorney General to adopt rules and regulations implementing the provisions of Chapter 93A, and these regulations appear in the Code of Massachusetts Regulations Title 940, Chapter 3.

24. One of the Attorney General's regulations reads in part as follows:

Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c. 93A, s. 2 if ...

(2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter the transaction

25. Angela S. Chin and Rosemary Victoria violated this regulation by not disclosing to the plaintiffs that four, massive, wind turbines would soon be constructed on the adjacent lot.
26. Massachusetts General Laws Chapter 93A, Section 9 provides that an aggrieved consumer may send a thirty-day demand letter to the person or persons committing an unfair or deceptive business act or practice.
27. On November 28, 2017, counsel for the plaintiffs sent such a 30-day demand letter to Rosemary Victoria and to Angela S. Chin.
28. A true and accurate copy of that letter is attached hereto, incorporated herein, and labeled "A."
29. The defendants did not respond within 30 days.
30. By a letter dated December 15, 2017 but mailed on January 8, 2018, Angela S. Chin and Rosemary Victoria did respond.
31. Instead of tendering a reasonable settlement offer, the defendants simply denied everything.
32. True and accurate copies of the defendants' letter and the envelope in which it was enclosed are attached hereto, incorporated herein, and together labeled "B."

33. The plaintiffs would not have purchased the property at 9 Morning Mist Lane if the defendants had informed them of the imminent construction of the wind turbines on the adjacent property.
34. Because of the construction of the wind turbines on the adjacent property, the value of the plaintiffs' real estate decreased substantially.
35. The defendants committed a material, unfair and deceptive, commercial act by not divulging to the plaintiffs that massive wind turbines would soon be built on the adjacent property.
36. The plaintiffs were harmed by the defendants' failure to disclose an element material to their purchase of 9 Morning Mist Lane.
37. The plaintiffs are entitled to the full set of remedies provided by Massachusetts General Laws Chapter 93A and the Attorney General's regulations.

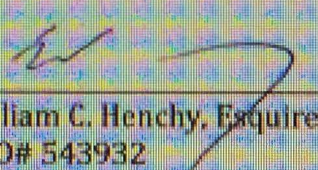
WHEREFORE, Alberto L. Fernandez Mojica and Tiffany A. Gendron, the plaintiffs, respectfully requests this Court to afford them the following relief:

- (a) to determine that the defendants' failure to disclose the imminent construction of four wind turbines on the adjacent property was an unfair and deceptive commercial act;
- (b) to determine that the defendants did not tender a reasonable settlement in response to the plaintiffs' 30-day demand letter;
- (c) to fix and determine the amount of harm the defendants' conduct caused the plaintiffs;
- (d) to enter against the defendants a judgment for the amount so determined;

- (e) to enter against the defendants a judgment for three times the amount so determined;
- (f) to enter against the defendant a judgment for the plaintiffs' litigation costs, including reasonable attorney's fees;
- (g) to award the plaintiffs prejudgment and post-judgment interest; and
- (h) to grant such other and/or additional relief as this Court deems appropriate for this case.

Dated: July 1, 2019

By their attorney:



William C. Henchy, Esquire
BBO# 543932
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Orleans, MA. 02653
(508) 255-1636
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INTERNET: whenchy@alumni.tufts.edu
www.henchylaw.com

By Deputy Sherriff Service and U.S. Mail, Postage Prepaid

November 28, 2017

Rosemary Victoria
a/k/a Rosemary V. Borneo
31 Fuller Avenue
Attleboro, MA 02073-4431

Angela S. Chin
155 Walnut Street
Bridgewater, MA 02324-2829

RE: Albert Fernandez and Tiffany A. Gendron; Demand for Relief Pursuant to G.L. c.
93A sec. 2 and 9

Dear Ms. Victoria and Ms. Chin:

Please be advised that this office represents Dr. Alberto Fernandez and his wife, Tiffany A. Gendron. This correspondence constitutes a demand for relief from you both, individually, and jointly and severally, as the result of your employment of unfair acts and practices in connection with your sale of the property located at 9 Morning Mist Lane in Bourne, MA.

Each of you were, at all relevant times, licensed real estate brokers in the Commonwealth. It appears that Ms. Victoria's broker's license was suspended and then voluntarily surrendered to the Board of Registration of Real Estate Brokers and Salesmen. Ms. Chin's broker's license appears to remain current and in good standing. Further, it appears that Ms. Chin is in the business of buying, rehabilitating, and selling residential and other real estate in the Commonwealth.

As you both know, there are now abutting my clients' land four very large wind turbines that are used in the production and sale of electricity. At the time that you

"A"

were engaged in selling 9 Morning Mist Lane to my clients, these wind turbines had been permitted but had not been built.

Ms. Chin had purchased 9 Morning Mist Lane on or about December 31, 2014 for the sum of \$150,000.00. Permitting for the wind turbines were ongoing at that time, and each of you appears to have been aware of the permit applications. After performing certain work on the property, it was placed on the market for sale. During the marketing of the property, one or more "open houses" were held. At one of these open houses, a neighbor, Karen Gibides, viewed the property. No mention of the wind turbines was made at that time.

At this, or another, open house, Richard and Kay Turgeon, also neighbors, viewed the property. Kay Turgeon had a specific conversation with Ms. Victoria concerning the proposed wind turbines. Mrs. Turgeon reports that Ms. Victoria specifically responded that she had no intention of sharing information about the proposed wind turbines with prospective buyers. Ms. Victoria made these statements as an agent of Ms. Chin and while acting within the scope of her authority to market and sell the property, and during an "open house" for that specific purpose. Upon information and belief, Ms. Chin instructed Ms. Victoria to withhold any information concerning the proposed wind turbines from prospective buyers.

On or about August 17, 2015, my clients signed a purchase and sale agreement for the 9 Morning Mist Lane property. The consideration was \$395,000.00. Ms. Chin signed the contract as the seller, and Ms. Victoria was a party to the contract as the broker.

At no point in time did either of you disclose to my clients the fact that on an adjacent property, four wind turbines, each some 450-500 feet high, had been permitted and would soon be constructed. It appears that you each in fact actively worked to conceal this information from prospective buyers, including my clients.

The wind turbines materially interfere with my clients' quiet enjoyment of their property. Dr. Fernandez is an emergency veterinarian. Ms. Gendron is a laboratory technician. Both have exacting, difficult jobs with great responsibility. They are unable to sleep with the windows open as the result of the sound from the nearby wind turbines. Their ability to have the quiet enjoyment of the property is substantially impaired.

Importantly, the value of the property has been substantially diminished. We have been advised, and therefore allege, that the value of 9 Morning Mist Lane has been reduced by 25-35% as the result of the construction and operation of the nearby wind turbines.

Your incentive to conceal the fact that these turbines had been permitted and would soon be constructed from prospective buyers is obvious. You each profited from

concealing this information from my clients. They, conversely, have been greatly damaged.

As real estate brokers, you are each engaged in trade or business and each had a duty to disclose to a prospective buyer any fact that would have had the effect of influencing a buyer not to enter into the transaction. 940 CMR 3.16; G.L. c. 93A sec. 2. Your concealment of the facts relating to the proposed wind turbines violated G.L. c. 93A sec. 2, was unfair, was deceptive, and specifically violated 940 CMR 3.16. The fact, known to you both, that a 450-foot tall wind turbine was about to be built on an adjacent property was certainly a fact that would have influenced my clients not to purchase the home. You exhibited knowledge of this fact when Ms. Victoria stated to Kay Turgeon that you had no intention of disclosing your knowledge of the wind turbines to prospective buyers.

G.L. c. 93A sec 9 provides that:

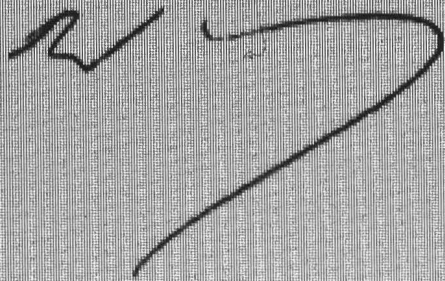
At least thirty days prior to the filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent. Any person receiving such a demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner. In all other cases, if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two

This letter constitutes a demand for relief in accordance with the statutory language quoted above. My clients demand that you reimburse them for the loss of 35% of the purchase price for 9 Morning Mist Lane in Bourne, MA, a sum totaling \$138,250.00.

You may respond with a reasonable offer of settlement within 30 days of the date of this correspondence. If you do not so respond, my clients may litigate this matter without further notice to you. In the event of such litigation, the Court may award two or three times my clients' actual damages, plus their reasonable attorney's fees.

I look forward to receiving your response within 30 days as provided by law. My clients reserve all of their rights, including any common law or statutory claims above and beyond those identified in this correspondence

Very truly yours,

A handwritten signature in black ink, consisting of a stylized 'W' followed by a long, sweeping horizontal line that curves upwards at the end.

William C. Henchy

Wch/

cc. clients

"B"

Atty. William C. Hendry, LLC
165 Cranbury Highway
Andover, MA 02653

RE: Albert Jernandez & Tiffany A. Hendron

Dear Atty. Hendry:

At the outset, we want to unequivocally state that NO "concealment" of any relevant information, nor "unfair acts or practices" occurred during the sale of 9 Mending Mist Lane, Andover, MA 02653. In addition, both Siller & Broken had complied to ALL provisions of the Purchase & Sale Agreement dated August 17, 2015.

Both Siller & Broken did NOT discuss

with neighbors Steven Tibides, and Richard & Kay Torgon any permit granted for the "4 very large wind turbines".

December 15, 2017

How can the Turgons even say that Ms. Chin instructed me to "withhold any information concerning the proposed wind turbine from prospective buyers"? They heard this conversation? Clearly, they are LYING!

ITEM 6, P & S, Title/Plans, Section H -
states NONE

which "references to any other easement, restriction, lease or encumbrance which may continue after title is transferred."

ITEM 20 of P & S, Warranties + Representations

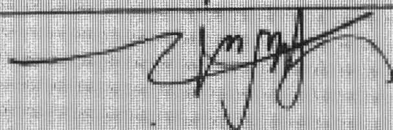
Both Seller & Broker did NOT misrepresent anything. Item 20 also mentions that it's the buyers' responsibility or "duty to seek advice from an attorney or written confirmation from the municipality". The Buyers had a lawyer. Hence, they also should have gone to the municipality as stated in ITEM 20.

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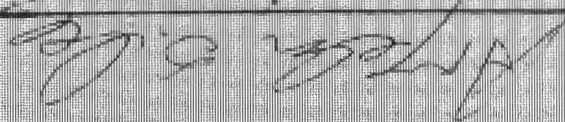
Also, Alberto L. Fernandez and
Jeffery A. Hendon lived at 31 Little Bay
Lane, Bourne, MA 02532, which is only
7 minutes (2.8 miles) from 9 Morning Mist
Lane, Bourne, MA 02532. The workers
mentioned to the Seller that Alberto L. Fernandez
visited 9 Morning Mist Lane MANY, MANY TIMES
without any notice or permission from the
SELLER. They lived within 2.8 miles (7 minutes)
from the property, not to mention that Mr.
Fernandez is very detail-oriented & meticulous.
Won't they know more about the area than
Mrs. Chin (Pridgewater) and me (Haleboro)?

In conclusion, this DEMAND LETTER has
NO MERIT. Both buyers based this allegation on
"HEARSAY" information that couldn't be verified.
The Turgens are clearly LYING! Their motivation?
Who knows! Thank you!

Josephine Victoria
31 Fuller Avenue
Jethelboro, MA 02703 - 4431



Angela S. Chin
155 Walnut Street
Bridgewater, MA 02324 - 2829



Ms. Angela S. Chin
Rosemary Victoria
155 Walnut Street
Bridgewater, MA 02324-2829

PROVIDENCE RI

08 JAN 2018 PM



Atty. William C. Fendy, LLC
165 Cranberry Highway
Orleans, MA 02653

02653-326799



COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT
CIVIL NO.

BARNSTABLE, SS.

JUL 03 2019

Clerk

ALBERTO L. FERNANDEZ MOJICA and
TIFFANY A. GENDRON,
PLAINTIFFS

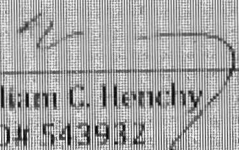
V.

ANGELA S. CHIN and ROSEMARY VICTORIA
a/k/a ROSEMARY V. BORNEO,
DEFENDANTS

JURY CLAIM

The plaintiffs demand a trial by jury on all claims triable to a jury.

By their attorney:


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